

INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MEMORANDUM

To: Interested Parties
From: Janet McCabe, Office of Air Quality
Re: NOx Rule for June 6 Air Board Meeting – **Notice of May 22 NOx Workgroup Meeting**

Date: May 16, 2001

The Indiana NOx SIP Call rule is currently scheduled for a public hearing and meeting before the Indiana Air Pollution Control Board for final adoption on June 6, 2001. Attached is rule language that is essentially in the form the Department intends to include in the Board Packet that will be sent to the Board next week.¹ The Department is recommending a number of revisions to the rule in response to the comments received from interested parties on the proposed rule as well as on the March 29, 2001 version of the rule. IDEM is also recommending certain revisions to the rule based on comments received from USEPA.

IDEM believes that most of these revisions are responsive to concerns raised by the public and by companies that will be affected by the rule. With respect to certain issues, IDEM is proposing a position that attempts to accommodate divergent views as fairly as possible, while still accomplishing the environmental objectives of the rule.

Some of the language contained in this rule will be new to the public and we realize there will be need to review and discuss it. We are also aware of the federal deadlines for completing this rulemaking as expeditiously as possible and the possibility of the imposition of a federal plan. Finally, a decision from the DC Circuit Court of Appeals on the court challenge to USEPA's Section 126 rule was just issued on May 15, 2001. Given all these factors, IDEM intends to ask the Board to hold the public hearing as scheduled on June 6. It may be appropriate at that time for IDEM to recommend to the Board that it continue the hearing and postpone its vote until the next Board meeting, on July 12. However, IDEM does not believe that final action on the rule should be postponed beyond July 12 given current federal deadlines and our disinterest in a federal implementation plan being imposed in Indiana.

IDEM is willing to meet with any interested parties to discuss the NOx rule. **We will be available on May 22, 2001 beginning at 1:00 p.m. in Conference Room C, Indiana Government Center South**, to meet go over the rule, the changes identified in this memo or any other parts of the rule, and any other issues.

¹ One key exception is the allocation methodology for nonEGUs, which is still under discussion with the affected sources.

In the attached document, new language since the proposed rule is underlined and language from the proposed rule that IDEM recommends be deleted is struck through and underlined.

Following is a brief summary of the most significant changes to the rule since the March 29, 2001 version:

326 IAC 10-3. The rule has been revised to include blast furnace gas units as well as changes to cement kiln requirements. These changes are based on discussions with individual companies, comments received in formal and informal comment periods, and discussions with USEPA. One of the most significant changes is the addition of section 10-3-6 addressing violations. Due to enforcement issues with an ozone control period average, USEPA requested that the language, similar to the penalty provisions in the trading program, be included. However, IDEM would retain discretion on the ultimate penalty in any individual enforcement action.

25 ton exemption. IDEM has made revisions concerning the 25 ton exemption in several ways. First, IDEM has expanded the language to allow an alternative emission rate established per 40 CFR 75.19. IDEM is seeking concurrence from USEPA that this approach is approvable. Second, language has been added to require a unit that has been allocated allowances and then becomes exempt to have allowances deducted in the amount of the permit limit. The owner or operator is required to make sure the account has the necessary allowances. The third involves the allowance allocations under 10-9. The revisions require that the allowance budget, both existing and new, be reduced by the permitted amount of NOx emissions for exempt units and the heat input for an exempt unit would be considered zero for future allocations. Section 10-4-1(b).

Section 126. In his letter to Commissioner Kaplan of May 3, 2001, USEPA's Director of the Office of Air Quality Planning and Standards John Seitz indicates that USEPA agrees that Indiana's NOx rule should supercede the Section 126 requirements as soon as it is in effect as long as its requirements with respect to sources covered by Section 126 are at least as stringent. USEPA intends to undertake the rulemaking necessary to accomplish this as soon as our rule is complete and the Court issues its decision. The letter explains USEPA's view of how sources will transition from Section 126 to the Indiana rule. IDEM has included in the rule language providing for this transition. Section 10-4-1(c), 10-15(b)(1)(I), 10-15(c), and changes to dates throughout 10-15.

New Source Set Aside. Comments on this issue have ranged widely. Key points of the new source set aside IDEM will recommend to the board are:

- separate set asides for EGUs and nonEGUs [10-4-9(e)(1)(A)]
- 5% EGU set aside for 2004-2009, and 2% thereafter. The fact that allocations will be made for 3 years, 3 years in advance means that new sources will not receive allocations as existing sources for a relatively long time. Based on projections from Indiana's Energy Office, Department of Commerce and the number of pending

applications, IDEM believes that a 5% set aside for the first six years of the program is an appropriate accommodation for new sources [10-4-9(e)(1)(A)(i)]

--1% nonEGU set aside [10-4-9(e)(1)(A)(ii)]

--Once a year allocation process for new sources. Allocations will be made by December 31 for the upcoming ozone season, earlier than in the proposed rule provided [10-4-9(e)(2)]

--New units would be given allowances assuming 75%, 50% or 25% of their maximum design heat input, depending on their anticipated usage [10-4-9(e)(3)(A)(ii)]

--Any unallocated allowances would be made available to the EE/RE set aside if that set aside is oversubscribed. If the EE/RE set aside is not oversubscribed, the excess new source tons would be distributed to existing sources. [10-4-9(e)(4)(E) and (F)]

--Any unused allowances would be returned to the state and rolled over to next year's new source set aside [10-4-9(f)]

EE/RE set aside. IDEM recommends certain refinements to the definitions pertaining to this section [10-4-2(18)] and has adjusted the order in which EE/RE projects would be eligible to be awarded allowances to give priority to demand side management and zero emitting projects [10-4-9(e)(4)(B)]. Any unallocated allowances from this set aside would be divided in half, with 50% being returned to the existing nonEGUs and 50% being rolled over to next year's EE/RE set aside [10-4-9(e)(4)(c)].

Allocations for nonEGUs. IDEM has evaluated several allocation formulas for nonEGUs, and needs to discuss specifics further with affected sources. The attached version of the rule retains the language preliminarily adopted by the Board, but IDEM anticipates making adjustments to this language. [10-4-9(d)]

Monitoring. USEPA has identified some language changes required for the parts of the rule that address monitoring requirements. The majority of the changes can be found under the monitoring requirements in 10-12.

IDEM will not be recommending to the Board that the rule include language on multipollutant paths, extending or expanding the compliance supplement pool, or general language to allow nonbudget units to generate allowances. USEPA has made very clear that such provisions would render the rule unapprovable.

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